Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 4, 2000, at 10:30 a.m. and 2:00 p.m. to hold two hearings.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, April 4, 2000 at 3:30 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities be authorized to meet during the session of the Senate on Tuesday, April 4, 2000 at 10:30 a.m. in open session to receive testimony on joint requirements, capabilities, and experimentation in review of the defense authorization request for the fiscal year 2001 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. DOMENICI. I ask unanimous consent that the staff of the Senate Budget Committee, including fellows and detailees included on the list I send to the floor, be permitted to remain on the Senate floor during consideration of S. Con. Res. 89 (106th Congress), and that the list be printed in the Record. The list includes majority and minority staff.

The Presiding Officer, the list was ordered to be printed in the Record, as follows:

MAJORITY STAFF


MINORITY STAFF

Nisha Antony, Claudia Arko, Gabby Batkin, Federic Baron, Steven Benson, Maggie Bierwirth, Patrick Bogenberger, Rock Cheung, Jim Equeua, Bruce King, Lisa Kowinski, Martin Morris, Sue Nelson, Barry Strumpf, Margaret Wolfe.

ADMINISTRATIVE STAFF

Alex Green, Sahand Sarshar, Lamar Staples, Lynne Seymour, George Woodall.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Sue Nelson and Mitc Warren be granted full access to the floor, and also Jim Hearn and Jim Capretta.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, pursuant to Public Law 96-114, as amended, announces the appointment of the following individuals to the Congressional Award Board: Elaine L. Chao, of Kentucky, and Linda Mitchell, of Mississippi.

The Chair, on behalf of the majority leader, after consultation with the Democratic Leader, pursuant to Public Law 93-415, as amended by Public Law 102-586, announces the reappointment of the following individuals to serve as members of the Coordinating Council on Juvenile Justice and Delinquency Prevention: Michael W. McPhail, of Mississippi, to a one-year term; Dr. Larry K. Brendtro, of South Dakota, to a two-year term; and Charles Sims, of Mississippi, to a three-year term.

The Chair, on behalf of the Vice President, pursuant to the provisions of S. Con. Res. 89 (106th Congress), appoints the following Senators to the Joint Congressional Committee on Intelligence to serve from March 1, 2001, to December 31, 2001: Mr. Lott, the Senator from Kentucky (Mr. McCONNELL), and the Senator from Connecticut (Mr. DODD).

TRIBAL SELF-GOVERNANCE

AMENDMENTS OF 1999

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 412, S. 979.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 979) to amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Self-Governance Amendments of 1999".

SEC. 2. FINDINGS.

Congress finds that—

(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

(3) although progress has been made, the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

(4) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian tribes;

(5) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.

SEC. 3. DECLARATION OF POLICY.

It is the policy of Congress—

(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;

(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

(D) to enable and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian tribes;

(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

(I) to provide services to Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.

SEC. 4. TRIBAL SELF-GOVERNANCE.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

"TITLE V—TRIBAL SELF-GOVERNANCE

"SEC. 501. DEFINITIONS.

"(a) IN GENERAL.—In this title:

"(1) CONSTRUCTION PROJECT.—The term ‘construction project’ means an organized noncontinuous undertaking to complete a specific set of predetermination objectives for the planning, environmental determination, design, construction, procurement, management, or expansion of buildings or facilities, as described in a construction project agreement; and
tribes participating in self-governance under
established under section 502.

SEC. 502. ESTABLISHMENT.

"(a) Self-Governance Demonstration Project under title III on the date of enactment of this title shall have the op-
tion to remain in the Tribal Self-Governance Demonstration Project under title III on the date of enactment of this title to-
"(b) The Secretary shall negotiate and enter into a written compact in self-governance in a manner consistent with the re-
"(c) The Secretary shall negotiate and enter into a written compact in self-governance in a manner consistent with the re-
"SEC. 505. FUNDING AGREEMENTS.

"(a) Funding Agreement Required.—The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and govern-
ment-to-government relationship between Indian tribes and the United States.

"(b) CONTENTS.—

"(1) IN GENERAL.—Each funding agreement required under subsection (a) shall, as deter-
nined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congress-
sionally earmarked competitive grants), for all program services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians, without regard to the agency or office of the Indian Health Service (or of such other agency) within which the program, service, function, or activity (or portion thereof) is per-
fomed.

"(2) INCLUSION OF CERTAIN PROGRAMS, SER-
VICES, FUNCTIONS, AND ACTIVITIES.—Such pro-
grants, services, functions, or activities (or por-
tions thereof) include—

"(A) the Act of November 2, 1921 (42 Stat. 208, chapter 147; 25 U.S.C. 13);

"(B) the Act of August 5, 1954 (68 Stat. 674, chapter 115; 25 U.S.C. 452 et seq.);

"(C) the Indian Health Care Improvement Act (25 U.S.C. 1301 et seq.); and

"(D) any other Act of Congress authorizing

"(a) existing compacts.—An Indian tribe participating in the Tribal Self-Governance

"(1) retain the Tribal Self-Governance

"(G) any other Act of Congress authorizing

"(E) any other Act of Congress authorizing

"(D) the Indian Health Care Improvement Act

"(C) the Indian Health Care Improvement Act

"(B) the Act of August 5, 1954 (68 Stat. 674, chapter 147; 25 U.S.C. 452 et seq.);

"(A) the Act of November 2, 1921 (42 Stat. 208, chapter 147; 25 U.S.C. 13); and

"(D) the Indian Health Care Improvement Act (25 U.S.C. 1301 et seq.);

"(B) the Act of August 5, 1954 (68 Stat. 674, chapter 147; 25 U.S.C. 452 et seq.);

"(A) the Act of November 2, 1921 (42 Stat. 208, chapter 147; 25 U.S.C. 13);
within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

(1) FUNDING OR COMPACT OR FUNDING AGREEMENT.—It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program, or that funds be available for inclusion in a compact or funding agreement under this title.

(2) FUNDING AGREEMENT TERMS.—Each funding agreement under this title shall set forth—

(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

(2) for the items identified in paragraph (1)—

(A) the general budget category assigned; (B) the funds to be provided, including those funds to be provided on a recurring basis; (C) the time and method of transfer of the funds; (D) the responsibilities of the Secretary and any other provision with respect to which the Indian tribe and the Secretary agree.

(3) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian tribe that is withdrawing or retroceding the operation of 1 or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, a compact or funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

(4) EXISTING FUNDING AGREEMENTS.—Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III on the date of enactment of this title shall have the option at any time thereafter to—

(1) retain the Tribal Self-Governance Demonstration Project funding agreement of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

(2) instead of retaining a funding agreement or portion thereof under paragraph (1), negotiate a new funding agreement in a manner consistent with the requirements of this title.

(5) STABLE BASE FUNDING.—At the option of an Indian tribe, a funding agreement may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under section 106(a)) to be transferred to such Indian tribe, for such period as the Secretary and the Indian tribe mutually agree upon, to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(6) AUDITS.—

(1) SINGLE AGENCY AUDIT ACT.—The provisions of chapter 75 of title 2, United States Code, relating to audits of the activities of the applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary in support of the reporting functions, activities, or portions thereof that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization); and

(2) DISTRIBUTION OF FUNDS.—When an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I, a compact or funding agreement under this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization—

(A) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of the funds transferred to it under the compact or funding agreement (as determined under subparagraph (B)); and

(B) the funds referred to in subparagraph (A) shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, on the condition that the provisions of sections 102 and 106(f) and (g) of title III fully or partially withdraw from a compact or funding agreement under this title through a self-determination contract with the Secretary and the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

(7) NON-DUPLICATION.—For the period for which, and to the extent to which, funding is provided under this title or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 102, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

SEC. 506. PROVISIONS RELATING TO THE SECRETARY.

(a) MANDATORY PROVISIONS.—

(1) HEALTH STATUS REPORTS.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision authorizing the Secretary to reassess operation of a program, service, function, or activity (or portions thereof) and associated funding if there is clear evidence of gross mismanagement or public health or gross mismanagement.

(2) REASSUMPTION.—In general.—(A) If the Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

(3) RECORDKEEPING SYSTEM.—For the period for which, and to the extent to which, funding is provided under this title or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 102, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

(b) CONFLICTS OF INTEREST.—Indian tribes participating in self-governance under this title shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

(1) ADDITIONAL INFORMATION.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and an Indian tribe’s option, included in the provisions that reflect such requirements in a compact or funding agreement.

(2) CONFLICTS OF INTEREST.—Indian tribes participating in self-governance under this title shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

(3) ADDITIONAL INFORMATION.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and an Indian tribe’s option, included in the provisions that reflect such requirements in a compact or funding agreement.

(1) ADDITIONAL INFORMATION.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and an Indian tribe’s option, included in the provisions that reflect such requirements in a compact or funding agreement.

(2) CONFLICTS OF INTEREST.—Indian tribes participating in self-governance under this title shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).
of the public health caused by an act or omission of the Indian tribe; and

(‘‘(II) the endangerment arises out of a failure to carry out a compact or funding agreement.”

(II) REASSUMPTION.—If the Secretary reassumes operation of a program, service, function, or activity (or portion thereof) under this subsection, the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after such reassumption.

(D) HEARINGS.—In any hearing or appeal involving the reassumption operation of a program, service, function, or activity (or portion thereof), the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence the validity of the grounds for the reassumption.

(E) FINAL OFFER.—In the event the Secretary and a participating Indian tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary. Not more than 45 days after such submission, or within a longer time agreed upon by the Indian tribe, the Secretary shall review and make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, made in compliance with subsection (c), the offer shall be deemed agreed to by the Secretary.

(1) By mutual agreement (or by a timely written notification required by subparagraph (A)).

(2) By an administrative judge.

(3) IN GENERAL.—If the Secretary rejects an offer made under subsection (b) or (1) or more provisions (or the levels in such offer), the Secretary shall provide—

(A) a timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

(i) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title;

(ii) the program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to an Indian tribe;

(iii) the Indian tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that would not result in significant danger or risk to the public health or safety;

(iv) the Indian tribe is not eligible to participate in self-government under section 503;

(B) technical assistance to overcome the objections of the Indian tribe.

SEC. 509. TRANSFER OF FUNDS.

(1) Andrew.—Pursuant to the terms of any compact or funding agreement entered into under this title, the Secretary may transfer to the Indian tribe all funds provided for in the funding agreement, pursuant to subsection (c), and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions. In any instance where a funding agreement requires an annual transfer of funds, the Secretary, at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the Secretary shall provide not less than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

(2) Multiyear Funding.—The Secretary may employ, upon tribal request, multiyear funding agreements. References in this title to a funding agreement shall include such multiyear funding agreements.

(3) AMOUNT OF FUNDING.—The Secretary shall provide funds under a funding agreement entered into under this title to the amount that the Indian tribe would have been entitled to receive under self-determination contracts entered into under section 106(a)(1) and amounts for contract support costs specified under section 106(a) (2), (3), (5), and (6), including any funds that are specifically or functionally related to the provision by the Secretary of benefits and services to the Indian tribe or its members, all without regard to the organizational level within the Department where such services are carried out.

(4) PROHIBITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary is expressly prohibited from—

(A) failing or refusing to transfer to an Indian tribe its full share of any central, head-quarters, regional, area, or service unit office or other funds due under this Act, except as required by Federal law;

(B) withholding portions of such funds for transfers to another person or entity;

(C) reducing the amount of funds required under this Act—

(i) to make funding available for self-governance monitoring or administration by the Secretary;

(ii) in subsequent years, except pursuant to paragraph (2); and

(iii) to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under this Act; or

(iv) to pay for costs of Federal personnel directly served, contracted, and compacted programs.

(2) EXCEPTION.—The funds described in paragraph (1)(C) may be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c)(2).

(5) OTHER RESOURCES.—In the event an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, air transportation, and other supplies), or Federal programs (including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Indian tribe.

(6) Reimbursement to Indian Health Service.—With respect to functions transferred by the Indian Health Service to an Indian tribe, the Indian Health Service shall provide goods and services to the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursement described in this section, along with the funds received from the Indian tribe pursuant to this title, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

(7) PROMPT PAYMENT ACT.—Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this title.

(8) INTEREST OR OTHER INCOME ON TRANSFERED FUNDS.—An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes and such interest shall not be diminished for the purpose of funds the Indian tribe is authorized to receive under its funding agreement in any subsequent fiscal year.

(9) CARRYOVER OF FUNDS.—All funds paid to an Indian tribe in accordance with a compact or funding agreement shall accumulate and remain available until expended. In the event that an Indian tribe elects to carry over funding from 1 year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.
“(i) PROGRAM INCOME.—All medicare, medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to that negotiated in the funding agreement, and may remain in the tribe in the year that such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601) establishes a reserve for medicare and medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year that the Indian tribe is transferring funds under the funding agreement to the Secretary. If the Secretary determines that the Indian tribe does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

SEC. 509. CONSTRUCTION PROJECTS.

“(a) IN GENERAL.—Indian tribes participating in tribes entered into construction projects under this title that they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a project plan, and

“(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and

“(2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

“(b) NEGOTIATIONS.—Construction project proposals shall be negotiated pursuant to the statutory process in section 1603(m) and resulting construction agreements shall be interpreted and incorporated into funding agreements as addenda.

“(c) CODES AND STANDARDS.—The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

“(d) RESPONSIBILITY FOR COMPLETION.—The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

“(e) FUNDING.—Funding for construction projects carried out under this title shall be included in the tribe’s base budget as annual advance payments, with semianual payments at the option of the Indian tribe. Annual advance and semianual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

“(f) APPROVAL.—The Secretary shall have at least 1 opportunity to approve project planning and development by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with a copy of any request for an approval not less than semiannually. The Secretary may conduct site visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

“(g) WAGES.—All laborers and mechanics employed by contractors and subcontractors in the construction, alteration, or repair, including painting and painting-related decorating of a building or other facilities in connection with construction projects undertaken by the Tribal Self-Governance Indian tribes under this Act, shall be paid wages at not less than the prevailing rates prevailing on similar construction projects in the locality as determined by the Indian tribe.

“(h) APPLICATION OF OTHER LAWS.—Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including executive orders) shall apply to any construction project conducted under this title.

SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULATIONS.

“Notwithstanding any other provision of law, unless expressly agreed to by the participating Indian tribe, the compacts and funding agreements entered into by the Indian tribe shall be subject to Federal contracting or cooperative agreements and regulations (including Executive orders and the regulations relating to procurement issued by the Secretary), except to the extent that such laws expressly apply to Indian tribes.

SEC. 511. CIVIL ACTIONS.

“(a) CONTRACT DEFINED.—For the purposes of section 110, the term ‘contract’ shall include compacts and funding agreements entered into under this title.

“(b) APPLICABILITY OF CERTAIN LAWS.—Section 2001 of the Revised Statutes (25 U.S.C. 81) and section 16 of the Act of June 18, 1934 (48 Stat. 987; chapter 576; 25 U.S.C. 476), shall not apply to contracts and the regulations relating to procurement issued by the Secretary, except to the extent that such laws expressly apply to Indian tribes.

SEC. 512. FACILITIES AND PROPERTY.

“(a) SECRETARIAL INTERPRETATION.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders and regulations in a manner that will facilitate—

“(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds authorized therein the agreements entered into under this section;

“(2) the implementation of compacts and funding agreements entered into under this title; and

“(3) the achievement of tribal health goals and objectives.

“(b) REGULATORY WAIVER.—(1) IN GENERAL.—An Indian tribe may submit a request for waiver application of a regulation promulgated under section 517 of the authorities specified in section 506(b) for a compact or funding agreement entered into under this Act, to the Indian Health Service under this title, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

“(2) APPROVAL.—Not later than 90 days after receipt by the Secretary of a request by an Indian tribe to waive application of a regulation promulgated under section 517 of the authorities specified in section 506(b) for a compact or funding agreement entered into under this title, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law.

“(c) ACCESS TO FEDERAL PROPERTY.—In connection with any compact or funding agreement executed pursuant to this title or an agreement entered into under the Tribal Self-Governance Demonstration Project established under title III, as in effect before the enactment of the Tribal Self-Governance Amendments of 1999, upon the request of an Indian tribe, the Secretary shall—

“(1) permit an Indian tribe to use existing school buildings, hospitals, and other facilities and equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary’s jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the Indian tribe for their use and maintenance;

“(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

“(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of a compact or funding agreement or purchased with funds under any compact or funding agreement may be requested by the Indian tribe, vest in the appropriate Indian tribe;

“(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of donation, withdrawal, or reassignment, at the option of the Secretary upon the return of the property, withdrawn, or reassignment; and such property and equipment shall revert to the Department of Health and Human Services; and

“(C) all property referred to in subparagraph (A) shall remain eligible for replacement, maintenance, and improvement on the same basis as if title to such property were vested in the United States; and

“(3) shall acquire excess or surplus Government personal or real property for donation to an Indian tribe if the Secretary determines the property is appropriate for use by the Indian tribe in the performance of any purpose of the compact or funding agreement is authorized under this title.

“(d) STATE FACILITATION.—States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this title and other Federal laws benefiting Indians and Indian tribes.

“(f) RULES OF CONSTRUCTION.—Each provision of this title and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.

SEC. 513. BUDGET REQUEST.

“(a) REQUIREMENT OF ANNUAL BUDGET REQUEST.—(1) IN GENERAL.—The President shall identify and transmit to the Congress under section 1105 of title 31, United States Code, all funds necessary to fully fund all funding agreements authorized under this title and any contributions to fund tribal base budgets. All funds so appropriated shall be apportioned to the Indian tribe.
Health Service. Such funds shall be provided to the Office of Tribal Self-Governance which shall be responsible for distribution of all funds provided under section 505.

(2) Present funding shortfalls.—Nothing in this subsection shall be construed to authorize the Indian Health Service to reduce the amount of funds that a self-governance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

(b) Content.—In such budget request, the President shall identify the level of need presently funded and any shortfall in funding (including direct program and contract support costs) for each Indian tribe, either directly by the Secretary of Health and Human Services, under self-determination contracts, or under compacts and funding agreements authorized under this title.

SEC. 514. REPORTS.

"(a) Annual Report.—

(1) In general.—Not later than January 1 of each year after the date of enactment of this Act, the Secretary shall submit to the Committee on Indian Affairs of the Senate a report containing the information that the Secretary is obligated to include in the report submitted under paragraph (2) of section 513 of the Tribal Self-Governance Amendments of 2000.

(2) Contents.—The report submitted under subsection (a) shall include—

(A) the relative costs and benefits of self-governance;

(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and their members;

(C) the funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

(D) the funding formula for individual tribal shares under compacts or funding agreements, including the comments of affected Indian tribes or tribal organizations, developed under subsection (c); and

(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

"(b) Discretionary application.—At the request of a participating Indian tribe, any other provision of title 5, United States Code, to carry out this section shall be deemed effective immediately and shall control the negotiation and resulting compact, annual funding agreement, grant, or cooperative agreement under this Act.

"(c) Authority.—The term the term 'agency' means any agency or other organizational unit of the Department of Health and Human Services of the Secretary另有 the Secretary of the Interior.

"(d) Requirement.—The committee shall consider the report submitted under subsection (a) in determining the extent to which its jurisdiction is affected by the provisions of this title.
SEC. 602. DEMONSTRATION PROJECT FEASIBILITY.

"(a) STUDY.—The Secretary shall conduct a study of the feasibility of a tribal self-governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of the agency.

"(b) CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

"(1) the probable effects on specific programs and program beneficiaries of such a demonstration project;

"(2) statutory, regulatory, or other impediments to implementation of such a demonstration project;

"(3) strategies for implementing such a demonstration project;

"(4) costs or savings associated with such a demonstration project;

"(5) methods to assure quality and accountability in such a demonstration project; and

"(6) such other issues that may be determined by the Secretary or developed through consultation pursuant to section 603.

"(c) RESULTS.—Within 18 months after the date of enactment of this title, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives. The report shall contain—

"(1) the results of the study under this section;

"(2) a list of programs, services, functions, and activities (or portions thereof) within each agency with respect to which it would be feasible to include in a tribal self-governance demonstration project;

"(3) a list of programs, services, functions, and activities (or portions thereof) included in the list submitted pursuant to paragraph (2) that could be included in a tribal self-governance demonstration project without amending statutes, regulations, or other programs of the Secretary that the Secretary may waive;

"(4) a list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) that were not included in the list provided pursuant to paragraph (3) in a tribal self-governance demonstration project; and

"(5) any separate views of tribes and other entities consulted pursuant to section 603 related to the information provided pursuant to paragraph (1) through (4).

SEC. 603. CONSULTATION.

"(a) STUDY PROTOCOL.—

"(1) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with Indian tribes to determine a protocol for consultation under subsection (b) prior to consultation under such subsection with the other entities described in such subsection.

"(2) REQUIREMENTS FOR PROTOCOL.—The protocol shall require, at a minimum, that—

"(A) the Indian tribes and the Secretary jointly conduct the consultations required by this section; and

"(B) the consultation process allows for separate and direct recommendations from the Indian tribes and other entities described in subsection (a).

"(b) CONDUCTING STUDY.—In conducting the study under this title, the Secretary shall consult with Indian tribes, States, counties, municipalities, program beneficiaries, and interested public interest groups, and may consult with other entities as appropriate.

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for fiscal year 2000 and such sums as may be necessary to carry out this title. Such sums shall remain available until expended.''

SEC. 6. AMENDMENTS CLARIFYING CIVIL PROCEDURAL RIGHTS.

(a) BURDEN OF PROOF IN DISTRICT COURT ACTIONS.—Section 102(e)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f(e)(1)) is amended by inserting after subsection (b)(3) the following: ‘‘(c) annual reports.—Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this Act. Such report shall include—

"(1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;

"(2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;

"(3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate Secretary;

"(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

"(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

"(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services in any Indian tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 105(d).’’

SEC. 11. REPEAL.

"(a) IN GENERAL.—Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j note) is repealed.

"(b) EFFECTIVE DATE.—This section shall take effect on October 1, 1999.

SEC. 12. SAVINGS PROVISION.


AMENDMENT NO. 292

Mr. KYL. Mr. President, Senator Campbell has a substitute amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The amendment (No. 292) was agreed to. The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 292) was agreed to.

Mr. KYL. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. The amendment, as amended, was agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CAMPBELL. Mr. President, I am pleased that today the Senate will pass S. 979, a bill to make permanent the Self-Governance in Health Care Demonstration Project that was begun in 1994. After numerous hearings by the Committee on Indian Affairs and months of
negotiations aimed at getting consensus on this legislation, the Senate has voted to continue and expand the successful Self-Governance in Health Care pilot that has proven so helpful in improving the health care of Native people and in assisting tribes in the development of their governments and economies.

I thank and acknowledge Senator Gorton and his staff for their efforts in helping to iron out the differences that stood in the path of agreement on this bill.

I am hopeful this legislation will make its way to the President in short order for his favorable consideration.

Mr. MCCAIN. Mr. President, I am pleased the Senate will pass H.R. 1167, the Tribal Self-Governance Amendments of 1999. This legislation is the culmination of years of work by the Indian Affairs Committee, Indian tribes and the Indian Health Service, IHS, to make permanent the successful tribal self-government demonstration program.

Since its inception, tribes have enthusiastically embraced the self-governance program because it allows them to assume greater control over health care programs and services which are now provided by the IHS. Tribal self-governance has succeeded because it respects the special trust relationship between Indian tribes and the United States. It puts into practice the principles of government-to-government relations between Indian tribes and the United States. It has voted to continue and expand the health care programs and services.

Mr. KYL. Mr. President, for the information of all Senators, the Senate will begin debate on the budget resolution at 9:30 a.m. tomorrow. The time until 11 a.m. will be equally divided for the two leaders, but will begin debate on the budget resolution at 9:30 a.m. tomorrow. The time until 11 a.m. will be equally divided for the two leaders, but will be in addition to the estimated $15 to $25 billion annual costs of the nuclear arsenal we maintain against nuclear arsenals we maintain against nuclear attacks. This delay, it should be noted, will give Congress and the President some additional breathing room before we begin the debate to deploy a missile defense system.

Finally, I ask unanimous consent that the Senate then insist on its amendment and request a conference with the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1167), as amended, was read the third time and passed.

Mr. KYL. Mr. President, I seek unanimous consent that S. 979 be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The President ordered the Journal of proceedings be approved to Thursday night or Friday morning of this week.

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment, under the previous order, following the remarks of Senator KERREY of Nebraska.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate from the great State of Nebraska.

NUCLEAR WEAPONS

Mr. KERREY. Mr. President, the Department of Defense announced about 2 weeks ago that they are going to delay a critical feasibility test of an interceptor which would protect the United States from a ballistic missile attack. This delay, it should be noted, will give Congress and the President some additional breathing room before we begin the debate to deploy a missile defense system. It may even mean the final decision on deployment may not occur until after the November Presidential election, as many have urged already.

However, I believe, we should use this opportunity to consider anew the threats which the United States faces as a consequence of nuclear weapons. The approximately $25 billion missile defense system being contemplated is in response to a threat that does not exist today but very assuredly could if nations such as North Korea, Iran, or Iraq continue to develop mass destruction programs. Under estimates provided to us by the CIA’s National Intelligence Estimates and a panel of experts headed by Mr. Donald Rumsfeld, we have been alerted to the possibility exists that these countries would have weapons of mass destruction and the means to deliver them to the United States within 5 years. It is this potential threat, along with a possible accidental or unauthorized launch by Russia, that justifies the attempt to build an effective missile defense system.

Three facts should be understood before proceeding further. First, this system is not the original Star Wars proposal of President Reagan. In other words, it is not a system which would protect us against a massive attack by the Soviet Union. It would merely mean the United States would have the means to deliver a nuclear attack. Second, the annual costs to build and maintain this new system would be in addition to the estimated $15 to $25 billion annual costs of the nuclear arsenal we maintain against the old threat of the Soviet Union. Third, the deterrent argument we used during the cold war was based on the rational presumption that the Soviet Union would not attack because they knew that an attack would result in the destruction of their nation. However, we cannot presume rational behavior from North Korea, Iraq, Iran, or potential terrorists will be the order of the day. We prove that we would be willing to suffer the consequences of retaliation to do terrible damage to the United States of America.

A scenario which imagines such an attack quickly justifies the investment in missile defenses. Even one relatively small nuclear weapon from North Korea, Iran, Iraq, or a non-nation-state terrorist could launch at the United States would inflict more damage than...